IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3656 of 1986
WITH
SPECIAL CIVIL APPLICATION No 6684 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASH R HARLIKER

Versus

BARODA MUNICIPAL CORPORATION

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Appearance:

MR MUKESH R SHAH for Petitioner

MR PRANAV G DESAI for Respondent No. 1

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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 19/04/2001

COMMON JUDGEMENT

1. As both these petitions involve a common issue the same are taken up for hearing and disposed of by by

this common order.

2. In Special Civil Application No. 3656 of 1986 the petitioner was appointed by the respondent corporation as Junior Clerk on 1/10/1962 and promoted to the post of Senior Clerk on 25/10/1974. It is the say of the petitioner that next promotional post is that of a Head Clerk for which the payscale is Rs.425 - 800 and in light of award dated 25/2/1983 passed by Industrial Tribunal, Gujarat State at Ahmedabad in Reference (IT) No.144/77, the petitioner is entitled to be promoted to the said post of Head Clerk as per seniority only.

3. The final directions in the aforesaid award of the Industrial Tribunal are as under :

"i) For all posts carrying pay-scales upto 550-900 promotions should be given on the basis of seniority only.

ii) For posts carrying pay-scales higher than 550-900, the present practice of filling up the posts by selection on the basis of merits, should continue.

iii) In no case, temporary charge of a post should be given to an employee for more than six months. The post should be filled in, in a regular way, within six months".

4. The respondent corporation has submitted in its affidavit-in-reply that for promotion to Senior Clerk to Head Clerk it is necessary that the employee must have passed L.S.G.D.Examination and that the petitioner has not passed the said examination and therefore, he is not being considered for promotion to the post of Head Clerk. It is further submitted that all the persons who were promoted to the post of Head Clerk are those who have passed the L.S.G.D. Examination. It is further submitted that the criteria for promotion to the post of Head Clerk is not only seniority but also the aforesaid qualifying examination and as the petitioner is not qualified the petitioner is not entitled to any relief.

5. The Advocate for the petitioner placed before us a judgment of this Court (Coram : S.A.Shah,J) rendered in Special Civil Application No. 2955 of 1983 dated 24/2/1984 and submitted that very award in Ref.(IT) No.144 of 1977 dated 25/2/1983 was under consideration in the said matter and the respondent was the same

corporation before this Court. It is observed by this Court as under :

"xxx xxxx xxxx However, the demand which has been referred for adjudication of the Tribunal is not restricted to any particular post, but the demand is for all the employees that have been employed by the respondent Corporation and the relief which has been granted by the learned Tribunal is also regarding all post which carry pay scales upto 550-900 which are to be filled in on the basis of seniority and the post carrying pay scales higher than Rs.550-900 are allowed to be filled up by selection on the basis of merits xxx xxx "

6. In view of the aforesaid decision of this Court as well as clear finding recorded by the Industrial Tribunal this petition requires to be allowed. We direct the respondent corporation to promote the petitioner to the post of Head Clerk in terms of the award dated 25/2/1983 as the said post carries payscale of Rs.425-800 only and hence should be filled up on the basis of seniority only and no further qualifications are stipulated in the award. The respondent - corporation shall give all consequential benefits to the petitioner. This petition is accordingly allowed.

7. In Special Civil Application No.6684 of 1989 the petitioner was appointed as Junior Clerk on 6/8/1964 and promoted to the post of Senior Clerk on 19/8/1975. The petitioner has also sought the same relief as in Special Civil Application No. 3656 of 1986. Except for the fact that in this petition the respondent corporation has not filed any affidavit-in-reply there is no difference in the facts and contentions. For the reasons stated hereinbefore we allow this petition on the same terms and directions. Rule made absolute in both the petitions with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt